

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOHNNY LEVELT BURNSIDE,

Plaintiff,

v.

No. 2:22-cv-00782-KG-KRS

MONARCH REAL ESTATE CORPORATION,
ADAM MARRUJO, and
BRADLEY BERGLUND,

Defendants.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

This is *pro se* Plaintiff's second action in this Court. *See Burnside v. Monarch Real Estate Corp.*, No. 2:22-cv-00587-KG-KRS ("*Burnside I*"). In *Burnside I*, United States Magistrate Judge Kevin R. Sweazea notified Plaintiff that his complaint failed to state a claim upon which relief can be granted and ordered Plaintiff to file an amended complaint. *See* Doc. 5, filed August 10, 2022, in *Burnside I*. Plaintiff filed an amended complaint and other documents. *See* Doc. 6, filed August 26, 2022, in *Burnside I*; Doc. 8, filed September 16, 2022, in *Burnside I*. The undersigned dismissed *Burnside I* without prejudice after finding that the amended complaint failed to state a claim. *See* Doc. 10, filed October 14, 2022, in *Burnside I*.

On October 19, 2022, Plaintiff filed his "Amended Factual Allegation" which alleges many of the same facts Plaintiff alleged in *Burnside I*. Doc. 1. The Clerk's Office opened this new case and filed the Amended Factual Allegation as a Complaint in this new case because *Burnside I* has been dismissed.

Because this is a new case, Judge Sweazea ordered Plaintiff to either pay the \$402.00 fee¹ for instituting a civil action or file an "Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form)" ("Application"). *See* Doc. 2 at 4, filed October 26, 2022 (stating "Failure to timely pay the fee or file an Application may result in dismissal of this case").

Federal law requires that persons filing a new case must pay a filing fee. *See* 28 U.S.C. §§ 1914 ("The clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court ... to pay a filing fee of \$350 ... [and] such additional fees only as are prescribed by the Judicial Conference of the United States"). The Court may allow a person filing a new case to proceed without paying the filing fee if the person files an Application which is approved by the Court. *See* 28 U.S.C. § 1915(a)(1) ("any court of the United States may authorize the commencement ... of any suit [or] action ... without prepayment of fees ... by a person who submits an affidavit that includes a statement of all assets such [person] possesses that the person is unable to pay such fees"). Plaintiff did not pay the fee or file an Application by the November 16, 2022, deadline.

The Court dismisses this action without prejudice because Plaintiff has not paid the \$402.00 fee or filed an Application.

IT IS ORDERED that this case is **DISMISSED** without prejudice.


UNITED STATES DISTRICT JUDGE

¹ The fee for instituting any civil action, suit or proceeding is comprised of a \$350.00 filing fee, *see* 28 U.S.C. §1914, and a \$52.00 administrative fee.